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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

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12 CENTER FOR ENVIRONMENTAL HEALTH,) Case No. RG21107796
13 a non-profit corporation,)
14) **[PROPOSED] CONSENT**
15 Plaintiff,) **JUDGMENT AS TO BEACHBODY,**
16) **LLC**
17)
18 vs.)
19)
20 GYMSHARK USA, INC. *et al.*,)
21)
22 Defendants.)
23)
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26)
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28)
_____)

21 **1. INTRODUCTION**

22 **1.1** The parties to this Consent Judgment (“Parties”) are the Center for
23 Environmental Health (“CEH”) and defendant Beachbody, LLC (“Settling Defendant”). CEH
24 and Settling Defendant are referred to collectively as the “Parties.”

25 **1.2** Settling Defendant is a limited liability company that employs ten (10) or
26 more persons and that distributes and/or sells latex resistance bands that may contain n-
27 nitrosodiethylamine (“NDEA”) and n-nitrosodimethylamine (“NDMA”) (collectively referred to
28 herein as “Nitrosamines”) in the State of California or has done so in the past.

1 **1.3** Nitrosamines, such as NDEA and NDMA, can form during the manufacturing
2 process of latex rubber products, including the Covered Products. One study contends that
3 Covered Products can be made using alternate accelerators (hereafter “Alternate Accelerator”)
4 that do not form Nitrosamines. *See* Sheth, et al., *Nitrosamine Generating Accelerators in Curing*
5 *of Rubber*, IJSRD, Vol. 1, Issue 3 (2013).

6 **1.4** On April 14, 2021, CEH served two 60-Day Notices of Violation under
7 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
8 & Safety Code § 25249.5, *et seq.*) (“Notices”) on Settling Defendant and its affiliate entity The
9 Beachbody Company Group, LLC, the California Attorney General, the District Attorneys of
10 every County in the State of California, and the City Attorneys for every City in the State of
11 California with a population greater than 750,000. One Notice alleges violations of Proposition
12 65 with respect to the presence of NDEA in latex resistance bands that are distributed and/or sold
13 by Settling Defendant and the other alleges violations of Proposition 65 with respect to the
14 presence of NDMA in latex resistance bands that are distributed and/or sold by Settling
15 Defendant.

16 **1.5** On July 22, 2021, CEH filed the above-captioned action in the Superior Court
17 of California for Alameda County. On September 30, 2021, CEH filed a First Amended
18 Complaint. On October 22, 2021, CEH named Settling Defendant as a Doe Defendant in this
19 action.

20 **1.6** For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
21 Court has jurisdiction over the allegations of violations contained in the operative Complaint in
22 the above-captioned action (“Complaint”) and personal jurisdiction over Settling Defendant as to
23 the acts alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii) this
24 Court has jurisdiction to enter and enforce this Consent Judgment.

25 **1.7** Nothing in this Consent Judgment is, or shall be construed as, an admission by
26 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
27 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
28 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall

1 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
2 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
3 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
4 this action.

5 **2. DEFINITIONS**

6 **2.1** “Covered Products” means latex rubber resistance bands manufactured,
7 distributed, or sold by Settling Defendant in California.

8 **2.2** “Effective Date” means the date CEH serves by email notice of entry of this
9 Consent Judgment.

10 **2.3** “Nitrosamine-Free Latex” means latex rubber that contains NDEA and/or
11 NDMA that is below the level of detection (“LOD”) using a detection limit equal to 50 parts per
12 billion (ppb) by weight when tested pursuant to ISO 19577-2019 by an independent accredited
13 laboratory. In the event that CEH becomes aware that the International Organization for
14 Standardization (“ISO”) has validated and published a modified version of ISO 19577-2019 that
15 results in a reduction in the LOD for NDMA and/or NDEA, CEH may initiate a meet and confer
16 pursuant to Section 6 to lower the LOD. In no event shall the LOD be reduced below 20 ppb.
17 Alternatively, Nitrosamine-Free Latex may be demonstrated as containing NDEA and/or NDMA
18 less than 10 ppb as determined using ASTM F1313-90 (2011) or EN-71-12:2013, modified to use
19 a sweat solution by an independent accredited laboratory.

20 **2.4** “Reformulation Date” means 180 days after the Effective Date.

21 **2.5** “Reformulation Requirements” means the injunctive obligations set forth in
22 Sections 3.1 and 3.2.

23 **3. INJUNCTIVE RELIEF**

24 **3.1 Specification Compliance Date.** No more than thirty (30) days after the
25 Effective Date, Settling Defendant shall issue specifications to its suppliers of the Covered
26 Products requiring that the Covered Products be made with Nitrosamine-Free Latex beginning no
27 later than the Reformulation Date. Settling Defendant shall obtain and maintain written
28 certification(s) from the suppliers of Covered Products confirming that all such Covered Products

1 received by Settling Defendant for distribution in California are made with Nitrosamine-Free
2 Latex. Settling Defendant may rely upon a written certification from its supplier that supplied a
3 Covered Product that such Covered Product is made with Nitrosamine-Free Latex if such
4 certification has not previously been demonstrated to be invalid. Settling Defendant may comply
5 with the requirements of this Section 3.1 by incorporating the requirements of this Section into its
6 vendor guidelines, restricted substances list or similar vendor specifications documents and
7 obtaining written confirmation from its suppliers through its standard vendor approval and
8 consent processes.

9 **3.2 Reformulation Commitment.** As of the Reformulation Date, Settling
10 Defendant shall not manufacture or import for sale in California any Covered Products that are
11 not certified to be made with Nitrosamine-Free Latex. Nothing in this Consent Judgment requires
12 Settling Defendant to (a) perform testing on the Covered Products; or (b) recall any Covered
13 Products that are already in the stream of commerce as of the Reformulation Date.

14 **3.3 Sell-Through for Existing Inventory.** The Reformulation Requirements of
15 Section 3 shall not apply to Covered Products that Settling Defendant has purchased prior to the
16 Reformulation Date, including but not limited to Covered Products in distribution centers, in
17 inventory, or at retail locations.

18 **3.4 Extension of Time to Comply with Reformulation Date.** If Settling
19 Defendant is unable to satisfy the Reformulation Requirements prior to the Reformulation Date,
20 Settling Defendant shall provide written notice to CEH at least thirty (30) days before the
21 Reformulation Date of its need to extend the Reformulation Date by an additional six (6) months.
22 Such written notice shall include a reasonably detailed description of Settling Defendant's efforts
23 to reformulate and the anticipated date of compliance. In addition, if Settling Defendant avails
24 itself of the extension allowed under this Section 3.4, Settling Defendant shall make the
25 additional payments specified in Section 5.4 below for such an extension.

26 **3.5** If Settling Defendant has not satisfied the Reformulation Requirements by the
27 applicable Reformulation Date (or any extension pursuant to Section 3.4) for any Covered
28 Products, then for all such Covered Products it shall provide a clear and reasonable warning that

1 complies with Section 3.6.1. In addition, if Settling Defendant avails itself of the warning option
2 allowed under this Section 3.6, Settling Defendant shall make the additional payments specified
3 in Section 5.3 below.

4 **3.6 Reformulation Alternative - Clear and Reasonable Warnings.** If Settling
5 Defendant determines that it is unable to comply with the Reformulation Requirements, Settling
6 Defendant may elect to label Covered Products with a Clear and Reasonable Warning that
7 complies with the provisions of this Section 3.6 and Title 27 California Code of Regulations
8 section 25600, *et seq.* (the “Warning Option”) and make additional payments as set forth in
9 Section 5.3.

10 **3.6.1 Warning Language.** A Clear and Reasonable Warning under this
11 Agreement shall state:



12 **WARNING:** This product can expose you to chemicals including N-
13 Nitrosodiethylamine and N-Nitrosodimethylamine, which are known to the
14 State of California to cause cancer. For more information go to
15 www.P65Warnings.ca.gov.

16 The word “WARNING” shall be displayed in all capital letters and bold print and shall be
17 preceded by the yellow warning triangle symbol that is the same height as the text of the word
18 **WARNING**, provided however, the symbol may be printed in black and white if the Covered
19 Product label is produced without using the color yellow. This warning statement shall be
20 prominently displayed on the outer packaging or tag or visible through the outer packaging of the
21 Covered Product and shall be displayed with such conspicuousness, as compared with other
22 words, statements or designs as to render it likely to be seen, read and understood by an ordinary
23 individual prior to sale. For internet, catalog, or any other sale where the product is not
24 physically present, the warning statement shall be displayed in such a manner that it is likely to be
25 read and understood by an ordinary individual prior to the authorization of or actual payment. In
26 lieu of the preceding warning content and methods set forth above, Settling Defendant may use
27 any specific safe-harbor warning content and method applicable to the Covered Products set forth
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1 in Title 27, California Code of Regulations, section 25600 *et seq.*, as amended August 30, 2018
2 and subsequently thereafter.

3 **3.6.2 Notice to CEH of Election to Warn.** At least thirty (30) days before
4 selling or distributing any Covered Products with warnings hereunder for NDMA and NDEA, the
5 Settling Defendant shall provide written notice to CEH that Settling Defendant has elected to
6 utilize the Warning Option.

7 **4. ENFORCEMENT**

8 **4.1** CEH may, by motion or application for an order to show cause before the
9 Superior Court of the County of Alameda, enforce the terms and conditions contained in this
10 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
11 Section 3 above, CEH shall provide Settling Defendant with a Notice of Violation setting forth
12 the basis for the alleged violation. The Parties shall then meet and confer regarding the basis for
13 CEH's anticipated motion or application in an attempt to resolve it informally. If, as part of the
14 meet and confer process, Settling Defendant provides CEH with evidence that its supplier(s) has
15 switched to an Alternate Accelerator as described in Section 1.3, such evidence shall serve as a
16 complete defense to a CEH enforcement notice. Should Settling Defendant produce test results
17 showing that the Covered Product that CEH has tested meets the Reformulation Requirements
18 hereunder, such evidence shall serve as a defense to a CEH enforcement notice. Should attempts
19 at meeting and conferring fail, CEH may file its enforcement motion or application. In ruling on
20 any motion to enforce the terms of this Section, the Court may, in addition to ordering
21 compliance with the terms of this Consent Judgment, employ such remedies as necessary to
22 ensure compliance with Proposition 65 including, but not limited to, requiring Settling Defendant
23 to provide warnings. Should CEH prevail on any motion or application to enforce a material
24 violation of this Consent Judgment under this Section, CEH shall be entitled to its reasonable
25 attorneys' fees and costs incurred as a result of such motion or application. Should Settling
26 Defendant prevail on any motion or application under this Section, Settling Defendant may be
27 awarded its reasonable attorneys' fees and costs as a result of such motion or application upon a
28 finding by the court that CEH's prosecution of the motion or application lacked substantial

1 justification. CEH's exclusive remedy for any failure to comply with the terms of this Consent
2 Judgment shall be a motion to enforce after meeting and conferring as set forth herein. Only the
3 Parties hereto may enforce the terms of this Consent Judgment.

4 **5. PAYMENTS**

5 **5.1 Payments by Settling Defendant.** Within fifteen (15) calendar days of the
6 Effective Date, Settling Defendant shall pay the total sum of \$50,000 as a settlement payment as
7 further set forth in this Section. Any payment by Settling Defendant shall be deemed to be timely
8 and not subject to a late charge and/or other penalty if (1) postmarked (if sent by the United States
9 Postal Service) or (2) delivered to an overnight carrier (e.g. Fed Ex), on or before the deadline set
10 forth in this paragraph.

11 **5.2 Allocation of Payments.** The total settlement amount for Settling Defendant
12 shall be paid in five (5) separate checks in the amounts specified below and delivered as set forth
13 below. The funds paid by Settling Defendant shall be allocated as set forth below between the
14 following categories and made payable as follows:

15 5.2.1 \$6,800 as a civil penalty pursuant to Health & Safety Code
16 § 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
17 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
18 Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
19 payment for \$5,100 shall be made payable to OEHHA and associated with taxpayer identification
20 number 68-0284486. This payment shall be delivered as follows:

21 For United States Postal Service Delivery:

22 Attn: Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

26 For Non-United States Postal Service Delivery:

27 Attn: Mike Gyurics
28 Fiscal Operations Branch Chief

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Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

The CEH portion of the civil penalty payment for \$1,700 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.2 \$4,750 as an Additional Settlement Payment (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH will use these funds to support CEH programs and activities that seek to educate the public about toxic chemicals, including carcinogenic nitrosamines such as NDEA and NDMA, work with industries interested in moving toward safer alternatives, advocate with government, businesses, and communities for business practices that are safe for human health and the environment, and thereby reduce the public health impacts and risks of exposure to NDEA, NDMA, and other toxic chemicals in consumer products sold in California. CEH shall obtain and maintain adequate records to document that ASPs are spent on these activities and CEH agrees to provide such documentation to the Attorney General within thirty (30) days of any request from the Attorney General. The payment pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.3 \$38,450 as a reimbursement of a portion of CEH’s reasonable attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks as follows: (a) \$32,950 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) \$5,500 payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. Both of these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

1 5.2.4 To summarize, Settling Defendant shall deliver checks made out to
2 the payees and in the amounts set forth below:

3 Payee	Type	Amount	Deliver To
4 OEHHA	Penalty	\$ 5,100	OEHHA per Section 5.2.1
5 Center For Environmental Health	Penalty	\$ 1,700	LLG
6 Center For Environmental Health	ASP	\$ 4,750	LLG
7 Lexington Law Group	Fee and Cost	\$ 32,950	LLG
8 Center For Environmental Health	Fee and Cost	\$ 5,500	LLG

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10 **5.3 Payment if Settling Defendant Elects Warning Option for NDMA and**
11 **NDEA.** If Settling Defendant avails itself of the Warning Option provided for by Section 3.6,
12 Settling Defendant shall make an additional payment of \$13,500 to be split between a civil
13 penalty and ASP as set forth herein, concurrently with its written notice as provided in Section
14 3.6.2. Of the additional payment, \$7,000 shall be a civil penalty, apportioned in accordance with
15 Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of
16 Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of
17 the civil penalty payment of \$5,250 shall be made payable to OEHHA, associated with taxpayer
18 identification number 68-0284486, and sent to the OEHHA address set forth in section 5.2.1
19 above. The CEH portion of the additional civil penalty payment of \$1,750 shall be made payable
20 to the Center for Environmental Health and associated with taxpayer identification number 94-
21 3251981. \$1,500 of the additional payment shall be made payable to Lexington Law Group, 503
22 Divisadero Street, San Francisco, CA 94117 for fees and costs associated with the additional
23 payment. The remaining \$5,000 of the additional payment shall be made payable to the Center
24 for Environmental Health and associated with taxpayer identification number 94-3251981 and
25 shall be used as set forth in Section 5.2 above. Both payments to CEH shall be delivered to
26 Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117. The additional payment
27 in this Section only applies to warnings for NDMA and/or NDEA. Should Settling Defendant
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1 begin providing a Proposition 65 warning for the Covered Products that names a chemical other
2 than NDMA or NDEA, Settling Defendant shall not be responsible for making the additional
3 payment required under this section if it provides CEH with evidence that its supplier(s) has
4 switched to an Alternative Accelerator as described in Section 1.3.

5 **5.4 Additional Contingent Payments for Extending Reformulation Date.** If

6 Settling Defendant avails itself of the extension option provided for Covered Products by Section
7 3.4, within thirty (30) days of first electing to extend the Reformulation Date, Settling Defendant
8 shall make an additional payment of \$5,000. At the same time it makes any necessary payment
9 under this Section, Settling Defendant may provide CEH with sales data on a confidential basis to
10 support a reduction of the payment. Any such reduction of the payment shall be calculated based
11 on Settling Defendant's most recent annual California sales of Covered Products. If CEH
12 disagrees as to the amount of the reduction, the parties shall meet and confer in good faith. If the
13 Parties cannot informally resolve the dispute within thirty (30) days of initiating their meet and
14 confer efforts, CEH may seek to have the dispute resolved by the Court. Any additional civil
15 penalty payments under this section shall be apportioned in accordance with Health & Safety
16 Code § 25249.12 (25% to CEH and 75% to OEHHA). The CEH portion of the \$3,500 civil
17 penalty payment is \$875 and shall be made payable to the Center for Environmental Health and
18 associated with taxpayer identification number 94-3251981. This payment shall be delivered to
19 Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117. The OEHHA portion of
20 the civil penalty payment of \$2,625 shall be made payable to OEHHA and associated with
21 taxpayer identification number 68-0284486. This payment shall be delivered as follows:

22 For United States Postal Service Delivery:

23 Attn: Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 P.O. Box 4010, MS #19B
27 Sacramento, CA 95812-4010

28 For Non-United States Postal Service Delivery:

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Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

The remaining \$1,500 of the additional payment shall be made payable to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117 for fees and costs associated with the additional payment.

6. MODIFICATION

6.1 Modification. This Consent Judgment may be modified from time to time by express written agreement of the Parties with the approval of the Court, or by an order of this Court upon motion and in accordance with law.

6.2 Alternative Compliance Standards. If CEH enters into a court-approved settlement or a court enters final judgment in a Proposition 65 enforcement action involving exposure to NDMA or NDEA in latex that includes a different reformulation standard or definition of Nitrosamine-Free Latex than Section 2.3 or a court determines that there is no reliable or validated methodology for testing for NDMA or NDEA, Settling Defendant only is entitled at its option to initiate a meet and confer in good faith on conforming modifications to this Consent Judgment. If the Parties are unable to reach agreement, Settling Defendant may move the Court to modify the Consent Judgment.

6.3 Meet and Confer. Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment.

7. CLAIMS COVERED AND RELEASED

7.1 This Consent Judgment is a full, final and binding resolution between CEH on behalf of itself and the public interest and Settling Defendant and Settling Defendant’s parents, subsidiaries, affiliated entities that are under common ownership (including The Beachbody Company Group, LLC), directors, officers, members, employees, agents, shareholders,

1 successors, assigns, and attorneys (“Defendant Releasees”), Settling Defendant’s suppliers, and
2 all entities to which Settling Defendant directly or indirectly distributes or sells Covered Products,
3 including but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors
4 and licensees (“Additional Defendant Releasees”), of any violation of Proposition 65 based on
5 failure to warn about alleged exposure to NDEA or NDMA contained in the Covered Products
6 that were manufactured, imported, sold, distributed or offered for sale by Settling Defendant prior
7 to the Reformulation Date.

8 **7.2** CEH, for itself, its agents, successors and assigns, releases, waives, and
9 forever discharges any and all claims against Settling Defendant, Defendant Releasees, and
10 Additional Defendant Releasees arising from any violation of Proposition 65 or any other
11 statutory or common law claims that have been or could have been asserted by CEH regarding a
12 violation of Proposition 65 and/or the failure to warn about exposure to NDEA or NDMA or any
13 other Proposition 65 listed nitrosamine arising or in connection with the Covered Products that
14 were manufactured, imported, sold, distributed or offered for sale by Settling Defendant prior to
15 the Reformulation Date.

16 **7.3** Compliance with the terms of this Consent Judgment by Settling Defendant
17 shall constitute compliance with Proposition 65 by Settling Defendant, the Defendant Releasees
18 and its Additional Defendant Releasees with respect to any alleged failure to warn about NDEA
19 or NDMA in the Covered Products manufactured, distributed, or sold by Settling Defendant after
20 the Effective Date, except as to any other retail seller who fails to provide an internet or catalogue
21 warning provided to said retailer pursuant to Section 3.6 in a manner consistent with Section
22 3.6.1.

23 **7.4** The Parties intend the above release to be a full, final accord and satisfaction
24 and release of claims with respect to the Covered Products. In furtherance of this intention, CEH,
25 on behalf of itself only, acknowledges it is familiar with California Civil Code section 1542,
26 which is set forth below, and waives and relinquishes all of the rights and benefits it has, or may
27 have under this statute or any similar laws with respect to the Covered Products.

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1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
2 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
3 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
4 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
OR RELEASED PARTY.

5 **8. NOTICE**

6 **8.1** When CEH is entitled to receive any notice under this Consent Judgment, the
7 notice shall be sent by first class and electronic mail to:

8 Mark Todzo
9 Lexington Law Group
10 503 Divisadero Street
11 San Francisco, CA 94117
mtodzo@lexlawgroup.com

12 **8.2** When Settling Defendant is entitled to receive any notice under this Consent
13 Judgment, the notice shall be sent by first class and electronic mail to:

14 Trenton H. Norris
15 Arnold & Porter Kaye Scholer LLP
16 Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
trent.norris@arnoldporter.com

17 **8.3** Any Party may modify the person and address to whom the notice is to be sent
18 by sending the other Party notice by first class and electronic mail.

19 **9. COURT APPROVAL**

20 **9.1** This Consent Judgment shall become effective upon entry by the Court. CEH
21 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
22 shall support entry of this Consent Judgment.

23 **9.2** If this Consent Judgment is not entered by the Court, it shall be of no force or
24 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
25 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.
26

1 **10. GOVERNING LAW AND CONSTRUCTION**

2 **10.1** The terms of this Consent Judgment shall be governed by the laws of the State
3 of California.

4 **11. ATTORNEYS' FEES**

5 **11.1** Should CEH prevail on any motion, application for an order to show cause, or
6 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
7 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
8 Settling Defendant prevail on any motion application for an order to show cause or other
9 proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result
10 of such motion or application upon a finding by the Court that CEH's prosecution of the motion
11 or application lacked substantial justification. For purposes of this Consent Judgment, the term
12 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
13 California Code of Civil Procedure §§ 2016, *et seq.* This section is not intended to preclude the
14 ordinary operation of California Civil Code §1717.

15 **11.2** Except as otherwise provided in this Consent Judgment, each Party shall bear
16 its own attorneys' fees and costs.

17 **11.3** Nothing in this Section 11 shall preclude a Party from seeking an award of
18 sanctions pursuant to law.

19 **12. JOINT PREPARATION**

20 **12.1** The Parties have jointly participated in the preparation of this Consent
21 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. Accordingly,
22 any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against
23 any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to
24 this Consent Judgment agrees that any statute or rule of construction providing that ambiguities
25 are to be resolved against the drafting Party shall not be employed in the interpretation of this
26 Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654. No
27 inference, assumption, or presumption shall be drawn, and no provision of this Consent Judgment
28 shall be construed against any Party, based upon the fact that one of the Parties and/or their

1 counsel prepared or drafted any portion of this Consent Judgment. It is conclusively presumed
2 that the Parties participated equally in the drafting of this Consent Judgment.

3 **13. ENTIRE AGREEMENT**

4 **13.1** This Consent Judgment contains the sole and entire agreement and
5 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
6 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
7 merged herein and therein. There are no warranties, representations, or other agreements between
8 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
9 implied, other than those specifically referred to in this Consent Judgment have been made by any
10 Party hereto. No other agreements not specifically contained or referenced herein, oral or
11 otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation,
12 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
13 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
14 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
15 whether or not similar, nor shall such waiver constitute a continuing waiver.

16 **14. SUBMISSION OF REPORTS AND DATA TO CEH**

17 **14.1** For any report or information that Settling Defendant submits to CEH pursuant
18 to this Consent Judgment, Settling Defendant may make such a submission subject to the terms of
19 a protective order and/or confidentiality agreement as appropriate.

20 **15. COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE § 25249.7(f)**

21 **15.1** CEH and its attorneys agree to comply with the reporting form requirements
22 referenced in California Health and Safety Code section 25249.7(f).

23 **16. SUCCESSORS AND ASSIGNS**

24 **16.1** This Consent Judgment shall apply to and be binding upon CEH and Settling
25 Defendant, and other respective divisions, subdivision, and subsidiaries, and the successors and
26 assigns of any of them.

1 **17. RETENTION OF JURISDICTION**

2 **17.1** This Court shall retain jurisdiction of this matter to implement, enforce or
3 modify the Consent Judgment.

4 **18. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

5 **18.1** Each signatory to this Consent Judgment certifies that he or she is fully
6 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
7 and execute the Consent Judgment on behalf of the Party represented and legally bind that Party.

8 **19. NO EFFECT ON OTHER SETTLEMENTS**

9 **19.1** Nothing in this Consent Judgment shall preclude CEH from resolving any claim
10 against an entity that is not the Settling Defendant (or a Defendant Releasee) on terms that are
11 different than those contained in this Consent Judgment.

12 **20. EXECUTION IN COUNTERPARTS**

13 **20.1** The stipulations to this Consent Judgment may be executed in counterparts and
14 by means of facsimile or portable document format (pdf), which taken together shall be deemed to
15 constitute one document.

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17 **IT IS SO ORDERED, ADJUDGED,
18 AND DECREED:**

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Dated: _____, 2022

Judge of the Superior Court of the State of California

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IT IS SO STIPULATED:

Dated: November 1, 2022

CENTER FOR ENVIRONMENTAL HEALTH



Regina Jackson
Interim Chief Executive Officer

Dated: October 25, 2022

BEACHBODY, LLC



Signature

Blake T. Bilstad
Printed Name

Chief Legal Officer & Corporate Secretary
Title